

Docket No: 07-0483
Bench Date: 3/12/08
Deadline: 4/1/08

MEMORANDUM

TO: The Commission

FROM: Claudia E. Sainsot, Administrative Law Judge¹

DATE: March 5, 2008

SUBJECT: Illinois Commerce Commission, on its own Motion,
Development of Net Metering Standards Required by P.A.
95-0420

RECOMMENDATION: Enter the attached Second Notice Order.

The Procedural Background

The instant rulemaking docket establishing standards for net meters, which are used to measure the flow of electricity that customers sell to their electric suppliers, as well as that which they receive. Both the electric utilities and the alternative retail electric suppliers (the “ARES”) must offer net metering to the public. (220 ILCS 5/16-107.5(b)).

The Net Metering Statute requires this Commission to have standards in place regarding net metering within 120 days from August 24, 2007. (220 ILCS 5/16-107.5(h)). Accordingly, on December 19, 2007, this Commission issued an Order authorizing the submission of an emergency rule regarding net metering to the Joint Committee on Administrative Rules (“JCAR”).

Pursuant to the Administrative Procedure Act, an emergency rule only can only be effective for 150 days. (5 ILCS 100/5-45(c)). As the attached Order indicates, this Commission’s Order of December 19, 2007 both submitted an emergency rule and initiated a First Notice Order for a permanent Rule. (See, *id.*, which specifically allows such submissions). The Proposed Rule was published in the Illinois Register on January 4, 2008. Thus, this Commission has until approximately June 2, 2008 to have a permanent net metering rule in place.

However, the Net Metering Statute requires the electricity providers to offer net metering to the public no later than April 1, 2008. (220 ILCS 5/16-107.5(j)). Thus,

¹ Ryan Neri, a legal extern, assisted in the preparation of the attached Order.

Commission Staff and all of the parties have expressed the opinion that it would be best to have a permanent rule in place as soon as possible.

Participating in this docket were the Commonwealth Edison Company; (“ComEd”) MidAmerican Energy Company; (“MidAmerican”) the Ameren Illinois Companies; (“Ameren”) the Illinois Attorney General; (the “AG”) the Environmental Law and Policy Center; (the “ELPC”) Commission Staff; Constellation New Energy, Inc. (“Constellation”) and the Retail Energy Suppliers Association (“RESA”). These entities filed Comments on January 17, 2008, and Reply Comments on January 23, 2008.

The Administrative Law Judge’s Proposed Order (the “ALJPO”) issued on February 20, 2008. The parties filed Briefs on Exception on February 26, 2008. The Parties and Commission Staff agreed that Reply Briefs on Exception were not necessary.

The matter discussed in the Briefs on Exception, were, for the most part, minor, or, identical to what was already set forth in the Comments. Staff proffered language that rearranged some of the subsections in 465.40 to add clarity to the language therein, which was added to subsection 465.40(h) in the ALJPO. Staff’s suggested language had no substantive effect, except to make the Rule easier to understand and easier to read.

Also, MidAmerican proffered two changes to the Rule. MidAmerican proffered language to add to subsection 465.50(b)(1)(ii) to make it clear that delivery charges, fees, taxes, and like items are imposed upon a customer, even when that customer produces more electricity than it receives, or, is a “net seller”. MidAmerican further proffered language to add to subsections 465.50(b)(1)(ii) and (b)(2)(ii) that explains how delivery charges, fees and taxes are imposed when a company like MidAmerican, that offers unbundled services, imposes unbundled rates. Both of these changes were added to the Rule, as they were reasonable and uncontroverted.

Accordingly, I recommend that the Commission enter the attached Second Notice Order.

CES:jt